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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 584

SEABOARD AIR LINE RAILROAD COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*,
INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY, *Intervenors*.

On Appeal from the United States District Court for the Eastern District of Virginia

MOTION TO AFFIRM

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MOTION TO AFFIRM

Atlantic Coast Line Railroad Company, intervenor-appellee, pursuant to Rule 16(1)(c), Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed on the ground that the questions presented are so unsubstantial as not to need further argument.

This is a direct appeal from a final judgment entered December 10, 1954, by a District Court of three judges

specially constituted pursuant to 28 U.S.C., Section 2284, dismissing an action brought by Seaboard Air Line Railroad Company in the District Court of the United States for the Eastern District of Virginia, Norfolk Division, to enjoin the enforcement of the order of the Interstate Commerce Commission dated July 30, 1954, issued in I.C.C. Docket No. 30882, *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company.* The decision of the three-judge Court was unanimous.

In support of its motion to affirm, Coast Line adopts as grounds for its motion those advanced in the motion filed or to be filed by the United States and the Interstate Commerce Commission, and in addition, it urges the grounds hereinafter set forth.

QUESTIONS PRESENTED

The questions presented by the appeal, as set forth in the notice of appeal, are as follows:

1.

Did the District Court err in holding that the order of the Interstate Commerce Commission of July 30, 1954, as modified by the order of said Commission of October 11, 1954, did not have the effect of establishing a new through route between the points named in said order?

2.

Did the District Court err in holding that the said order of the Commission of July 30, 1954, as modified, was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act?

3.

If said order of July 30, 1954, as modified, does have the effect of establishing a new through route between the points named in said order, was said order based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act?

4.

If said order of the Interstate Commerce Commission was based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act, were such findings supported by substantial evidence?

5.

Did the District Court err in finding that if the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 be exercised, an interchange point other than Thalmann would be necessary for the traffic here involved?

6.

Did the District Court err in finding that the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 was and is valid?

STATEMENT

For many years Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company have provided joint through interline service at joint rates on through traffic originating at points in Florida on the lines of the Seaboard south of Jacksonville destined to points on the line of the Coast Line from Waycross, Georgia, to Atlanta, Georgia and Birmingham, Alabama, and points on connecting lines beyond; and on like traffic in the reverse direction originating at points on the Coast Line from Waycross, Georgia, to Atlanta, Georgia and Birmingham, Alabama, and connecting lines beyond, destined to points in Florida on the lines of the Seaboard south of Jacksonville. This traffic has been and is interchanged between Coast Line and Seaboard at Thalmann, Georgia.

Thalmann, the present point of interchange, is located on the former Atlanta, Birmingham and Coast Railway, which extended from Brunswick, Georgia, to Atlanta and Birmingham. That railroad was absorbed by Atlantic

Coast Line Railroad Company on or about January 1, 1946. This gave Coast Line two closely parallel lines of railroad out of Brunswick, and in order to avoid duplication of service and to effect operating economies, Coast Line applied to the Interstate Commerce Commission and obtained a certificate of public convenience and necessity authorizing the abandonment of approximately 57 miles of the line of the former AB&C line between Alma, Georgia, and Anguilla, Georgia (near Brunswick). *Atlantic Coast Line Railroad Company Abandonment*, Finance Docket No. 16872, decided December 18, 1950.

Thalmann is located on the segment of track authorized to be abandoned and the exercise of the abandonment authority necessitates the substitution of another interchange point in lieu of Thalmann on the traffic interchanged at Thalmann.

The lines of the Coast Line and Seaboard in this area also connect at Jacksonville, Florida and Bladen, Georgia. Coast Line proposed that Jacksonville be substituted for Thalmann on the traffic involved. Seaboard proposed Bladen as the point of interchange to be substituted for Thalmann.

Being unable to agree, the issue was submitted to the Interstate Commerce Commission upon complaint of the Coast Line, and after extensive hearings the Commission issued its order of July 30, 1954, requiring the substitution of Jacksonville for Thalmann as the point of interchange at the joint rates and divisions in effect via Thalmann, or such rates and divisions as may be hereafter lawfully established.

The traffic involved which is interchanged at Thalmann is not large in volume. It is presently handled by Seaboard direct over its line from Baldwin to Thalmann where it is delivered to Coast Line. It is then handled by Coast Line from Thalmann through Sessoms, Georgia, for movement to Atlanta or Birmingham and points beyond.

With interchange at Jacksonville in lieu of Thalmann, the traffic would be handled by Seaboard from Baldwin

over to Jacksonville and interchanged with Coast Line at Jacksonville. It would then be handled by Coast Line through Waycross and Sessoms for movement to Atlanta or Birmingham and points beyond.

With interchange at Bladen in lieu of Thalmann, the traffic would be handled via Seaboard from Baldwin to Bladen for interchange with Coast Line at that point, and Coast Line would then handle the traffic from Bladen back through Waycross to Sessoms for movement to Atlanta or Birmingham and points beyond.

The traffic in the reverse direction would be given the same handling in reverse.

Whether interchanged at Thalmann, Jacksonville, or Bladen, the traffic would funnel through Sessoms.

Coast Line objected to the substitution of Bladen for Thalmann for the reason that it would necessitate physical handling of the traffic which would very seriously slow up and impair the existing interline service and schedules via Thalmann. It urged the use of Jacksonville for the reasons that there are already adequate interchange facilities at Jacksonville and a substantial amount of other traffic is interchanged between Coast Line and Seaboard at Jacksonville, and that interchange at Jacksonville would preserve and protect the existing through interline service and schedules now available via Thalmann. Seaboard's objection to the substitution of Jacksonville for Thalmann seems to be the fear that it might result in some improvement in the existing through interline service and might tend to divert traffic from other preferred Seaboard routes. It admits that if the amount of traffic now handled in the existing interline service would remain as it now is, the substitution of Jacksonville for Thalmann as the interchange point for traffic over the Seaboard-Coast Line route would be of little practical consequence. It first objected to the substitution of Jacksonville for Thalmann on the ground that it would not be practical from an operating standpoint. On its appeal it places main stress on the theory that the substitution of Jackson-

ville for Thalmann would be tantamount to the establishment of a new through route under Section 15(3), which it contends the Commission was not empowered to do on this record.

ARGUMENT

This case involves nothing more than a simple dispute between two rail carriers over the substitution of one interchange point for another interchange point on a joint through interline service which has been maintained by these carriers for many years. It is manifest that no substantial questions are presented which call for review by the Supreme Court.

Question No. 1

The first question raised is whether the District Court erred in holding that the order of the Interstate Commerce Commission of July 30, 1954, did not have the effect of establishing a new through route as that term is used in the Interstate Commerce Act.

Both the Commission and the District Court held that, under the facts of this case, the shift of the interchange point from Thalmann to Jacksonville did not have the effect of establishing a new through route, as that term is used in the Interstate Commerce Act, and both were plainly right.

In *Thompson* v. *U.S.*, 343 U.S. 549, as pointed out by the District Court, the Supreme Court has recently dealt with and defined the meaning of the term "through route", as used in the Interstate Commerce Act. The test laid down there is "whether the participating carriers hold themselves out as affording through transportation service". The emphasis is upon through service. As pointed out by the District Court in the instant case, through transportation service between Coast Line and Seaboard has been in existence for a number of years between the points involved in the Commission's order, via Thalmann, and all that is

being done is to establish a new point of interchange in lieu of Thalmann. The only change in the through route occurs in the short segment between Baldwin, Florida, and Sessoms, Georgia. There is no expansion of the existing through interline service. The traffic involved is through overhead traffic and is not affected by the shift of the interchange point. No intermediate traffic is affected. No change is made in the existing divisions. No change is made in the joint through rates now applicable on the traffic via Thalmann. The matter involved is simply a readjustment of the interchange facilities for the continued operation of an established joint interline service between Coast Line and Seaboard. The essential features of the old established through route still prevail.

The sole effect is that when the shipper elects to employ the available interline service between Seaboard and Coast Line on through traffic originated on the Seaboard south of Jacksonville destined to points on the Coast Line between Sessoms and Atlanta and Birmingham and points beyond, and traffic in the reverse direction, the traffic will be interchanged between Seaboard and Coast Line at Jacksonville instead of at Thalmann.

The minor shift of the interchange point has been held by the Commission to be reasonable.

Question No. 2

The second question presented is whether the District Court erred in holding that the Commission's order was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act.

We are here dealing with a through interline service which has been in effect between Seaboard and Coast Line for many years. Neither party has attempted to withdraw from that service. The preservation of that service necessitates the selection of another interchange point.

A mass of testimony was taken before the Commission to show the relative reasonableness of substituting Jack-

sonville or Bladen as the point of interchange in lieu of Thalmann. As pointed out by the District Court, the Commission, after weighing all possible advantages and disadvantages which might accrue at the various points, concluded that the service which would be afforded the traffic involved over new interchange facilities at Bladen would be less adequate, less efficient, and less economic than that which could be furnished over existing interchange facilities at Jacksonville. In such situation the Commission is plainly empowered to enforce the duty imposed by Section 3(4) that carriers "shall afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines". The District Court, on the record presented, very properly upheld the Commission's action.

Questions Nos. 3 and 4

Questions 3 and 4 raise the questions whether, assuming the Commission's order has the effect of establishing a new through route, the order is based upon the findings prescribed by Section 15(4), and such findings are supported by substantial evidence.

These questions are dealt with so effectively by the District Court that little else need be said.

It is, of course, settled that it is only where the Commission acts under Section 15(3) to establish a new through route that the short-haul provisions of Section 15(4) have any application. *U.S.* v. *Great Northern Railway*, 343 U.S. 562.

There is serious doubt whether this case really presents any question of shorthauling of Seaboard. With interchange at Thalmann, the Seaboard's distance from Baldwin to Thalmann is approximately 74 miles. The shift of the interchange point from Thalmann to Jacksonville would reduce Seaboard's distance to 18 miles, the distance between Baldwin and Jacksonville. But the Commission's order makes no change in existing divisions and Seaboard will continue to receive the same revenues with inter-

change at Jacksonville as it now receives with interchange at Thalmann. It is thus seen that Seaboard's plea of Section 15(4) is, at most, purely technical in that Seaboard is in nowise prejudiced from the standpoint of Section 15(4) by the Commission's order.

Nevertheless, as pointed out by the Court, the Commission went ahead and made the necessary findings under exceptions (a) and (b) of Section 15(4). As to exception (a), it stated:

> "The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville."

As to exception (b), it reaffirmed its earlier finding:

> "We think, also, that the circumstances here present may reasonably be considered as falling within exception (b) of Section 15(4) since the proposed route through Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation."

The record shows that with interchange at Bladen, the traffic could not be handled over to Waycross in time to connect with the Jacksonville-Waycross-Sessoms train and would have to move forward on the next available train which leaves Waycross the following morning. That would result in a delay of at least 12 hours on all traffic, and would have the effect of a 24-hour delay on perishable traffic because of missing the scheduled morning markets at destination. Interchange at Bladen, therefore, would seriously impair the existing service and schedules now available via Thalmann. The record shows also that Bladen interchange would require an extra train which would cost $102. per day, and that even with the extra train, the existing schedules could not be met via Bladen.

At Jacksonville, there are established interchange facilities between Coast Line and Seaboard and a large volume of traffic is already interchanged between Seaboard and Coast Line at Jacksonville. Jacksonville interchange would permit the traffic to move forward beyond Sessoms in the same trains in which it now moves with interchange at Thalmann, and would preserve the existing service and schedules. Seaboard believes that it will improve the existing service and schedules. In any event, with the abandonment of the line on which Thalmann is located, the evidence of record leaves no possible doubt that interchange at Jacksonville is clearly needed in order to provide adequate, and more efficient and more economic, transportation.

Question No. 5

Question 5 presents the question whether the District Court erred in finding that upon the exercise of the abandonment authority granted to the Coast Line to abandon the segment of line on which Thalmann is located, an interchange point other than Thalmann would be necessary on the traffic involved.

The District Court made no specific finding on this point. It did recite:

> "If this authority be exercised, an interchange point other than Thalmann would be necessary for the traffic involved."

That fact would appear to be self-evident. We have here an established through interline route between Coast Line and Seaboard with interchange at Thalmann. The route has never been cancelled and neither party has sought to cancel it. That the Commission in authorizing the abandonment of the line on which Thalmann is located did not contemplate the abandonment of the through service is evident from the Commission's report in that case in which it states:

"Applicant states that, in the event of abandonment, the overhead traffic now handled over the line would be moved in as good, if not better, service via available alternate routes." (*Atlantic Coast Line R.R. Co. Abandonment, supra.*)

Question No. 6

Question 6 raises the question whether the District Court erred in finding that the abandonment authority of the Coast Line granted in Finance Docket No. 16872 was, and is, valid.

While reference is made in this proceeding to Finance Docket No. 16872, *supra,* in which the Commission authorized the abandonment of the segment of line on which Thalmann is located, the Commission's decision in that case is not the subject of this appeal. It may not be amiss, however, to point out that that case was duly decided by the Commission after a comprehensive hearing. Upon consideration of the evidence, the Commission issued its certificate that the public convenience and necessity permitted of the abandonment of the line in question. Although the hearing was publicly advertised pursuant to the Commission's rules, no effort was made by Seaboard to intervene in the proceding prior to the close of the case. More than two years later, after the Commission had issued its first report in ICC Docket No. 30882, finding that Jacksonville should be substituted for Thalmann as the point of interchange in that case, Seaboard filed a petition under date of December 5, 1952, for leave to intervene in the abandonment case. The stated purpose of the intervention was to seek the revocation of the certificate issued in that case so as, thereby, to defeat the Commission's decision in Docket No. 30882. That petition for intervention was denied by the Commission under date of February 2, 1953.

The certificate of convenience and necessity issued by the Commission has never been revoked nor amended. In its report on further hearing dated January 11, 1954, the

Commission stated that the only matter in issue is the determination of a proper point of interchange "when the complainant shall have exercised its authority to abandon the line on which Thalmann, the present interchange point, is located", thus making it obvious that the Commission, as late as January 11, 1954, regarded the certificate as in full force and effect.

The District Court pointed out that Coast Line's authority to abandon is still valid. Plainly, there is no error in that statement.

CONCLUSION

It is plain that Questions 1-6 presented by this appeal as applied to the facts of this case, involving as it does a dispute between two carriers over a minor change in the interchange point of an established through interline service, pose no important questions of federal law. Nor does it appear that any right of the appellant is threatened. At most, appellant is fearful that if the interchange point is shifted from Thalmann to Jacksonville it may result in some improvement in service and thereby attract traffic from other preferred routes of the appellant. The decision on the questions presented will be of no national consequence. There is no conflict of decisions. It is manifest, therefore, that the questions presented by this appeal are so unsubstantial as not to need further argument in this Court.

It is manifest, also, that the decision of the court below is clearly correct.

It is respectfully submitted, therefore, that the appellant presents no substantial question for the decision of this

Court, and that the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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March 9, 1955.